

McCann FitzGerald

Solicitors

Riverside One

Sir John Rogerson's Quay

Dublin 2

Do2 X576

Tel: +353-1-829 0000

Fax: +353-1-829 0010

Email: inquiries@mccannfitzgerald.com

Dx 31 Dublin

www.mccannfitzgerald.com

MCCANN FITZGERALD

OUR REF

YOUR REF

DATE

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16 September 2016

Mr Ciarán McLoughlin
Company Law
Department of Jobs, Enterprise and Innovation
Earlsfort Centre
Lower Hatch Street
Dublin 2

[ciaran.mcloughlin@
djei.ie](mailto:ciaran.mcloughlin@djei.ie)

Section 279 of the Companies Act 2014

By Email & Courier

Dear Mr McLoughlin

1. **Purpose of letter**
 - 1.1 This letter is being submitted in response to the Invitation for Submissions on Review of Time Period in Section 279 of the Companies Act 2014 (the "Act") which was published by the Department of Jobs, Enterprise & Innovation (the "DJEI") on 28 July 2016.
 - 1.2 We note that two questions for consultation are set out in the consultation paper relating to the Invitation for Submissions (the "Consultation Paper"), which are as follows:
 - (a) Should the time period provided for at Section 279 of the Companies Act ("Section 279") be extended beyond December 2020?
 - (b) If extended, should this be for a specified period of time or on an open-ended basis (i.e. with no specific end date)?
 - 1.3 We set out below our responses to each of these questions.

Barry Devereux, Ronan Molony, Lonan McDowell, John Cronin, Catherine Deane, Paul Heffernan, Terence McCrann, Roderick Bourke, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hilary Marren, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Helen Kilroy, Judith Lawless, James Murphy, David Lydon, David Byers, Seán Barton, Colm Fanning, Paul Lavery, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle, Hugh Beattie, Fergus Gillen, Valerie Lawlor, Mark White, Eamon de Valera, Joe Fay, Ben Gaffikin, Donal O Raghallaigh, Karyn Harty, Philip Andrews, Barrett Chapman, Mary Brassil, Audrey Byrne, Shane Fahy, Georgina O'Riordan, Adrian Farrell, Michael Murphy, Aidan Lawlor, Darragh Murphy, Brian Quigley, Conor O'Dwyer, Stephen FitzSimons, David Hurley, Philip Murphy, Fiona O'Beirne, Garreth O'Brien, Gary McSharry, Joshua Hogan, Richard Leonard, Jenny Mellerick, Rory O'Malley, Lisa Smyth, Tom Dane, Catherine Derrig, Megan Hooper, Shane Sweeney, Adam Finlay, Iain Ferguson, Jennifer Halpin, Stuart McCarron, Stephen Proctor.

Consultants: Timothy Bouchier-Hayes, Rosaleen Byrne, Elva Carbery, David Clarke, Annette Hogan, Eleanor MacDonagh (FCA), Jane Marshall, Peter Osborne, Michael Ryan (FCA), Tony Spratt (ACA).

2. **Should the time period provided for at Section 279 of the Companies Act be extended beyond December 2020?**
- 2.1 As noted in the Consultation Paper, the Companies (Miscellaneous Provisions) Act 2009 (the "2009 Act") introduced a provision equivalent to Section 279, as it was anticipated at the time that international accounting bodies would converge International Financial Reporting Standards ("IFRS") and US generally accepted accounting principles ("US GAAP").
- 2.2 This process of convergence has not progressed in the time anticipated. Moreover, the rationale for Section 279 (and the equivalent exemption under the 2009 Act) remains unchanged, in that it would be unduly onerous to oblige a "relevant holding company" (within the meaning of Section 279) to prepare financial statements under both US GAAP and IFRS, in order to satisfy the financial reporting requirements of the US Securities and Exchange Commission (the "SEC") and Irish company law.
- 2.3 Requiring relevant holding companies to prepare and file financial statements under two separate financial reporting regimes would represent an unnecessary burden on financial and general corporate resources, which could otherwise be invested in the business of the companies concerned.
- 2.4 We understand from those of our clients which currently prepare and file their financial statements in accordance with US GAAP pursuant to Section 279, that creating and maintaining separate accounting records to facilitate the production of IFRS financial statements would involve significant once-off costs, followed by annual incremental costs measured in millions of Euro. In our view, these additional costs would appear to produce no benefit for shareholders in such companies (who, being investors in US-listed companies, would be accustomed to basing their review of the financial performance of their investments on US GAAP financial statements), the Irish government or the Irish public.
- 2.5 The contribution of relevant holding companies to the Irish economy is significant, in terms of job creation, investment in research and development facilities in Ireland and Exchequer returns. If the time period in Section 279 is not extended, we would be concerned that the financial, administrative and reporting burden which would be imposed on such companies may be a factor which influences a possible decision to consider re-domiciling their current Irish operations and divert future investment from Ireland.
- 2.6 We also note that, in recognition of the limited convergence in financial reporting standards which has already taken place between US GAAP and IFRS, the European Union has accepted the substantive equivalence of US GAAP to IFRS for the presentation of companies' financial information for the purposes of the Transparency¹ and Prospectus² Directives. This measure allows US GAAP to be used without reconciliation for the purposes of the required presentation of financial information pursuant to these European statutes and removes the significant additional burden which would be placed on companies subject to these directives that produce US GAAP financial statements, who would otherwise be required to prepare and file financial statements in accordance with two separate financial reporting regimes.

¹ European Commission Decision (2008/961/EC) in relation to the Transparency Directive.

² Commission Regulation (EC) No 1289/2008 in relation to the Prospectus Directive.

- 2.7 We respectfully submit that the imposition of such a burden through national law would be an unjustified departure from the approach taken at European Union level, particularly given the further anticipated convergence of IFRS and US GAAP in the coming years.
3. **If extended, should this be for a specified period of time or on an open-ended basis (i.e. with no specified end date)?**
- 3.1 Given the lack of a clear time-frame for a future convergence of IFRS and US GAAP, we respectfully submit that, for the reasons outlined above, the time period provided for in Section 279 should be extended on an open-ended basis, to allow for the further anticipated convergence of US GAAP and IFRS.

If you require any further information or would like to discuss further any aspect of this letter, please contact Ben Gaffikin or Stephen Fitzsimons of our Dublin office.

Yours sincerely



McCann FitzGerald